IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3475 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FULABEN GAPPUBHAI MAYAVATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3475 of 2001

MR ANIL VERMA for MR MM TIRMIZI for Petitioner No. 1

MR S.S.PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985

('the Act' for short), Commissioner of Police, Surat City, Surat , vide order dated March 13, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a Bootlegger within the meaning of Section 2(b) of the Act as three cases under the Prohibition Act are registered against the petitioner which are pending trial and statements of two anonymous witnesses are recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act is exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Anil Verma, learned advocate for the petitioner has restricted his arguments to the effect that there is an unexplained delay in passing the order of detention from the date of registration of the last offence as well as from the date of recording of statements of two anonymous witnesses and therefore, on this sole, ground order of detention is vitiated. He, therefore, urged to allow this petition by quashing and setting aside the order of detention and setting the petitioner at liberty forthwith.

5. Mr S.S.Patel, learned AGP has appeared on behalf of the respondent and has opposed the petition by making oral submissions. According to him, there is, in fact no delay in passing the order of detention from the date of registration of the last offence as well as from the date of recording of statements of two anonymous witnesses. In fact, order of detention is passed within a period of three months from the date of registration of the last offence and within a period of one month from the date of recording of statements of two anonymous witnesses, which according to him cannot be said to be abnormal delay and therefore, he prayed to reject the petition.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the

documents annexed therewith and the impugned order.

7. On having perusal of the impugned order it is seen that there are three cases registered against the petitioner for commission of the offences under Prohibition Act. The last offence came to be registered on December 13, 2000. Similarly statements of two anonymous witnesses were recorded on February 25, 2001. The witnesses in their statements have narrated the incidence of January 28, 2001 and February 15, 2001 whereas the order of detention came to be passed on March 13, 2001, therefore, there is a delay of three months from the date of registration of the last offence and delay of one month from the date of recording of the statements of two anonymous witnesses in passing the order of detention. Therefore, obviously, there is a delay in passing the order of detention.

8. In the case of ANAND PRAKASH V. STATE OF UP, AIR 1990 SC 516, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. A similar view is also expressed by this Court in ELESH NANDUBHAI PATEL V. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997 (1) GLH 381. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgements to the facts of the present case, the last offence was registered against the petitioner on December 13, 2000 for commission of offence under the prohibition Act, therefore, there is a delay of more than three months in passing the detention order. Similarly statements of two anonymous witnesses are recorded on February 25, 2001. Therefore, there is a delay of three months from the date of registration of the last offence and delay of one month from the date of recording of the statements of two witnesses in passing the order of detention. Therefore, on the ground of delay alone, the order of detention deserves to be quashed and set aside and the petition deserves to be allowed.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated March 13, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*